

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0001**

**Use Tax**

**For Years 1994, 1995, and 1996**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Use Tax - Imposition**

**Authority:** Ind. Admin. Code tit. 45, r. 2.2-5-59;  
Indiana Department of Revenue Information Bulletin #10, Application of  
Sales Tax to Not-For-Profit Organizations, revised February 10, 1986.

The taxpayer protests the tax assessed on its purchase of trade publications.

**II. Use Tax – Imposition**

**Authority:** Ind. Code § 6-2.5-3-2;  
Ind. Code § 6-2.5-4-1;  
Indiana Department of Revenue Information Bulletin #8, Sales Tax, revised  
February 9, 1990.

The taxpayer protests the tax assessed on its licensing of computer software.

**III. Tax Administration – Penalty**

**Authority:** Ind. Code § 6-8.1-10-2.

The taxpayer protests the 10% penalty assessed.

**STATEMENT OF FACTS**

The taxpayer, an Indiana company, leases industrial gas storage tanks. It also sells propane to residential and commercial customers and other gases to industrial customers. Additionally, the taxpayer sells welding equipment and supplies and rents, installs, and repairs space and water heaters. During the years 1994, 1995, and 1996, the taxpayer purchased informational materials and subscriptions to publications from various trade organizations. No sales or use tax was paid or submitted for those purchases. In 1996, the taxpayer paid a license fee for a computer

software upgrade. No sales or use tax was paid or submitted for that transaction. An audit was completed on September 2, 1997. The taxpayer was assessed use tax on, among other items, the informational materials, trade publication subscriptions, and the licensing fee for the computer software upgrade. In addition, a ten percent (10%) penalty was imposed.

On October 7, 1999, the taxpayer waived a hearing on these issues. This Letter of Findings is based on the taxpayer's protest letter and other information contained in the Department of Revenue file.

## **I. Use Tax – Imposition**

### **DISCUSSION**

The taxpayer argues that its purchases of informational material and trade publication subscriptions from various non-profit organizations are exempt from sales and use tax. In its protest letter, the taxpayer relies on Indiana Department of Revenue Information Bulletin #10, Application of Sales Tax to Not-For-Profit Organizations, revised February 10, 1986. Information Bulletin #10 provides in relevant part:

B. [S]ales of property that is intended primarily either for the organization's educational, cultural, or religious purposes or for improvement of the work skills or professional qualifications of the organization's members, may be sold exempt throughout the year.

...

D. Sales by a qualified organization, of periodicals, books, or other property of a kind designed and intended to improve the skill or professional qualifications of its members for the purpose of carrying on their business, trade, or profession, are exempt from sales tax.

E. Sales by a qualified organization, of periodicals, books, or other property to its members of a kind designed and intended to improve the skill or professional qualifications of its members for the purpose of carrying on their business, trade, or profession, are exempt from sales tax.

Ind. Admin. Code tit. 45, r. 2.2-5-59(a) provides:

The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designed and intended to improve the skill or professional quali-

fication of members of the organization for carrying on the work or practice of their trade, business or profession and not used in carrying on a private or proprietary business.

The purchases of the informational material and subscriptions were made from qualified not-for-profit organizations, the taxpayer is a member of those organizations, and the informational material and subscriptions were directly related to improving the skill and/or professional qualifications of the taxpayer's employees. The taxpayer's purchases of informational material and trade publication subscriptions are, therefore, exempt from sales and use tax.

### **FINDING**

The taxpayer's protest is sustained.

## **II. Use Tax – Imposition**

### **DISCUSSION**

The taxpayer argues that the license fee it paid for a computer software upgrade is not subject to sales or use tax because the fee was not for the actual purchase of the software and the software upgrade was not a transaction involving tangible personal property. "An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." Ind. Code § 6-2.5-3-2(a). The Department has determined that computer software is tangible personal property subject to sales tax or use tax. Indiana Department of Revenue Information Bulletin #8, Sales Tax (II)(B), revised February 9, 1990. The manner in which the property is transferred is irrelevant. The sale, lease, rental, or purchase of a license for computer software is the transfer of tangible personal property for consideration, i.e. a retail transaction, and is, therefore, subject to sales or use tax. Ind. Code § 6-2.5-4-1.

### **FINDING**

The taxpayer's protest is denied.

## **III. Tax Administration – Penalty**

### **DISCUSSION**

The taxpayer protests the assessment of a ten percent (10%) negligence penalty for its failure to remit use tax on its purchase of a computer software license. In its protest letter, the taxpayer maintains that it has attempted to comply with its sales and use tax obligations. A taxpayer may avoid a penalty by making an affirmative showing in a verified written statement that there was

reasonable cause for failure to pay the tax deficiency. Ind. Code § 6-8.1-10-2(e). The taxpayer has not provided the Department with reasonable cause for its failure to pay the tax deficiency. The penalty in this case is proper.

**FINDING**

The taxpayer's protest is denied.

RH/PE/MR-992311